

Agreements Compliance

Ensuring Americans Receive the Benefits of Trade Agreements

U.S. trade agreements are more than diplomatic expressions and political arrangements. They exist to benefit U.S. firms and workers, and to create export opportunities by opening markets. Trade compliance—monitoring and enforcing agreements and ensuring that market access is maintained—is, therefore, a top priority for TPCC agencies. The agencies actively employ technologically advanced information systems and teamwork to resolve market access problems. In order to ensure that the United States secures the full benefits of the approximately 250 far-reaching trade agreements this Administration has negotiated, TPCC agencies have taken an aggressive approach to monitoring compliance by our trading partners and to protecting U.S. interests.

Agencies focus on analyzing foreign trade barriers, ensuring effective implementation of agreements, and identifying possible trade agreement violations so that the United States benefits fully from its trade agreements. When necessary, agencies are diligent in pursuing enforcement actions, using dispute settlement procedures, and applying the full range of U.S. trade laws. The Administration has taken enforcement action in more than 75 instances and has established offices within the Commerce Department and the Office of the U.S. Trade Representative (USTR) dedicated exclusively to monitoring and enforcing trade agreements.

Monitoring Obligations: Providing the Tools

TPCC agencies have established a coordinated means of monitoring and conducting compliance analyses. Over the past year, TPCC agencies helped create the nation's first publicly-accessible agreements database with more than 250 bilateral and multilateral trade agreements and related market access information on over 90 countries. This database is available on the Commerce Department's Trade Compliance Center (TCC) web site, *TCC On-Line*, at <http://www.mac.doc.gov/tcc>. To make trade agreements even more accessible to small businesses, agencies are creating user-friendly summary statements for the trade and related agreements on the web site. These summaries will help exporters without access to expert consultancy make sense of the trade agreements the Administration has negotiated and better understand what their rights are when exporting to foreign markets. *TCC On-Line* also contains market access information, links to key U.S. Government and international trade organization sites, and an on-line trade complaint form.

The trade complaint feature permits companies experiencing trade agreement or market access problems to quickly and easily file their complaints with TPCC agencies. Firms no longer need to labor through the maze of government offices to receive help.

And once the complaint is filed, the TCC guarantees a response within 10 days. This service has been particularly useful for small and medium-sized firms. Issues brought to our attention through the on-line service are usually addressed by Commerce Department trade specialists and by staff in other TPCC agencies including USTR, the U.S. Department of Agriculture (USDA) and the State Department—by whomever has the expertise to solve a particular complaint. The TCC On-line service does not require that a problem be related to a trade agreement to receive assistance. Any market access problem submitted through the service will be addressed.

Another site, *Subsidies Enforcement*—http://www.ita.doc.gov/import_admin/records/esel—provides the U.S. exporting community with access to information about the remedies available under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures and the information necessary to develop a subsidies complaint, including an electronic database on foreign subsidy practices. This site also provides direct electronic mail access to the Subsidy Enforcement Office.

In addition to making it easier for firms to report market access and compliance problems, the Administration has reached out to firms, industry associations, research institutions, and unions. Secretary Daley has designated the Executive Secretaries of the 51 District Export Councils as Compliance Liaisons, and has written to over 100 associations, unions, and institutions asking that they also designate Compliance Liaisons. We expect the partnership between TPCC agencies and Compliance Liaisons not only to increase awareness of both the opportunities created by, and uses for, trade agreements, but also to establish a dynamic and proactive relationship between the government and private sector which serves to discover and resolve compliance problems before they escalate to formal disputes.

We are also actively using our overseas posts. Compliance activities are already part of every Senior Commercial Officer's performance plan, and all U.S. Embassies are actively engaged in looking for, and reporting on, market access barriers. Secretary Daley, Ambassador Barshefsky, and Secretary Albright sent a joint message to all American Ambassadors and Heads of Mission concerning the importance of monitoring compliance and the vital role that our overseas missions play in ensuring that our trading partners live up to their end of the bargain.

Compliance Priorities

Current compliance priorities include monitoring our trading partners' WTO commitments; the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention; bilateral agreements (in particular, with Japan, South Korea, and

“An open, growing and prosperous world economy is important to both America's economic health and our national security. There is no region of the world where we do not have a stake in improving market opportunities for American firms and workers. Trade plays a substantial role in determining our economic security, and we must remain active in opening markets to pave the way for higher levels of American exports and investment abroad.”

Madeleine K. Albright
Secretary of State

China), and monitoring trade-related aspects of International Monetary Fund (IMF) Stabilization Packages. Compliance analysts have developed a WTO Accession Compliance Matrix to analyze whether newly acceding members have fully implemented the commitments they negotiated when joining the WTO. These commitments include most-favored-nation and national treatment, market access, services, intellectual property rights, and quantitative restrictions.

In December 1997, 33 countries adopted the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, thereby obligating themselves to criminalize bribery of foreign public officials. Once implemented, this convention will help level the playing field between U.S. firms and foreign competitors. Commerce has developed a monitoring plan to ensure compliance with the OECD Anti-Bribery Convention that outlines specific objectives and benchmarks to determine signatory compliance and aids U.S. business in understanding the convention's provisions and benefits.

Agencies of the TPCC have paid special attention to *Japan* given the nature of the trade barriers that U.S. goods and services face there. We are monitoring Japanese compliance with, *inter alia*, bilateral agreements on glass, autos and auto parts, telecommunications, computer procurement, supercomputer procurement, insurance, construction, and medical technology. We are also monitoring the deregulation initiative.

Certain foreign governments have undertaken trade commitments as conditions of recent *IMF stabilization packages*. We are working closely with both the business community and our overseas officers to monitor any compliance issues that might arise in the implementation of these program conditions.

Another means of examining compliance involves use of objective *econometric methodologies* to uncover potential compliance problems and prioritize our efforts. For example, we examine trade flows to measure the effects of important economic events on our trade and market access and study the effect of trade arrangements between our trading partners.

When problems are uncovered through these various means, the TPCC agencies quickly move to resolve them. Actions vis-a-vis the foreign government can include letters or phone calls from the Secretaries of Commerce, Agriculture, or the U.S. Trade Representative or staff-level contacts in Washington, the host capital or informally in Geneva by our representatives to the WTO. Foreign government trade agencies are sometimes willing to move quickly to correct problems upon learning of actions of sister agencies that may impede trade or violate agreements.

Defending Our Rights: Using Dispute Settlement

Whenever possible, we try to resolve market access or agreement violations without resorting to formal WTO dispute settlement procedures so that U.S. exporters can more rapidly enjoy the benefits of open market access. However, this is not always achievable. The Administration monitors implementation of the Uruguay Round agreements, NAFTA, and other multilateral and bilateral trade agreements, and uses dispute settlement procedures vigorously to compel compliance.

The Monitoring and Enforcement Unit at the USTR has invoked formal procedures under the new WTO dispute settlement mechanism in 41 cases to date—more than any other country in the world. But the point of the U.S. enforcement strategy is not to bring and win a lot of cases, but rather to ensure that the gains that were sought in past trade negotiations are meaningful and that the mere existence of a strong enforcement mechanism is a deterrent to future trade barriers. The WTO dispute settlement procedures have already yielded positive results. The United States has prevailed in seven cases (one of these wins is under appeal) and prevailed in “out of court” settlements in nine cases. Five cases brought by the United States are pending before panels and sixteen are either in consultations or we are monitoring progress. These cases cover a number of WTO agreements—involving rules on trade in goods, trade in services, and intellectual property protection—and affect a wide range of sectors of the U.S. economy. Some of these cases, like our complaint against Indonesia’s national car program, involve a wide variety of pernicious practices, like subsidies and trade-related investment measures, that are emblematic of the trade barriers facing U.S. exports in many countries. We have lost only two cases in dispute settlement.

TPCC agencies coordinate their activities to ensure the most effective use of the U.S. trade laws administered by USTR. These efforts complement the U.S. Government’s dispute settlement strategy and help it address problems that are outside the scope of the WTO and NAFTA. We have achieved successful results on more than 75 occasions using U.S. trade laws, including Section 301 of the Trade Act of 1974, “Special 301” for intellectual property, “Super 301” for dealing with barriers that affect U.S. exports with the greatest potential for growth, Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications issues, and Title VII of the 1988 Act for addressing government procurement practices.

Use of these trade statutes administered by USTR has resulted in significant benefits to U.S. industries, farmers, and workers. For example, “Special 301” has been particularly effective for improving intellectual property laws and enforcement mechanisms. In this regard, careful monitoring of the implementation of the two intellectual property rights (IPR) agreements with China, and the threat of sanctions under Section 301 for failure to implement the first of those two agreements, have, together, provided substantial and continuing improvements in China’s IPR enforcement (although there are still problems to be resolved on this issue).

Strategy for the Coming Year

During the coming year, TPCC agencies will focus on ensuring that the public has a better understanding of the opportunities that the Administration has created for U.S. exports through the agreements it has negotiated, as well as of the extensive efforts to enforce these agreements. Specific initiatives will include:

- Heightened monitoring activities for bilateral and regional agreements—with a focus on Japan, Korea, China, and NAFTA through the use of interdisciplinary monitoring teams of country and industry sector specialists;

- Initiation of new WTO cases with a view to (1) using dispute settlement procedures to deter future trade barriers; (2) highlighting the types of practices that are impermissible and that will not be allowed to stand under WTO rules (particularly with respect to countries like China and Russia, which are negotiating the terms of their WTO accession); (3) benefiting labor-intensive manufacturing industries, while continuing to focus on high-value cases involving high-technology, electronic commerce, and intellectual property protection; and (4) focusing on industries where trade deficits may signify market access barriers;
- Improvement of the *TCC On-Line* database of trade agreements and Complaint Hotline, including introduction of a new search mechanism that will radically enhance the usefulness of the database; and
- Better identification of the positive benefits of trade agreements we have negotiated, and better dissemination of information about potential market opportunities arising from these agreements.